

**IN THE UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

| | | |
|---------------------------------|---|-----------------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | No. 1:19-cr-127 |
| v. |) | |
| |) | |
| LOURDES TERRAZAS SILES, |) | Hon. Leonie M. Brinkema |
| Defendant. |) | |
| |) | Motions Hr'g: June 7, 2019 |

CONSENT MOTION TO CONTINUE MOTIONS HEARING

The defense has filed a motion to dismiss this case on statute of limitations grounds or, alternatively, under 8 U.S.C. § 1326(d) because the underlying removal order was invalid. *See* Def. Motion, Dkt. No. 22 (May 17, 2019). In response to the § 1326(d) argument, the government has pointed to 8 U.S.C. § 1225(b)(1)(D), which purports to divest courts of jurisdiction to hear a collateral attack in certain cases, including, according to the government, this one. *See* Govt. Resp., Dkt. No. 23, at 5-7 (May 31, 2019). This constitutional question was recently confronted and resolved in favor of the defense in *United States v. Silva*, 313 F. Supp. 3d 660, 669 (E.D. Va. 2018) (Lauck, J.), which held § 1225(b)(1)(D) unconstitutional in a similarly postured case. Indeed, § 1225(b)(1)(D), if given the effect the government seeks, would deprive a large swath of removed non-citizens from any meaningful review of a critical factual element in *a criminal proceeding* under § 1326. The Supreme Court has opined that

such a deprivation contravenes due process. *See United States v. Mendoza-Lopez*, 481 U.S. 828, 839 (1987). *See also Silva*, 313 F. Supp. 3d at 676 (citing *Mendoza-Lopez*).¹

The parties agree that, since this constitutional issue has been raised, further briefing is appropriate. *See* Govt Opp., Dkt. No. 23, at 5 & n.2 (May 31, 2019). The defense wishes an opportunity to fully brief the Court on these issues, and the government wishes an opportunity to further respond. As well, in light of the government's response on the unrelated statute of limitations argument, the defense has requested additional discovery and the government, separately, has located additional responsive documents. Those materials and the government's response to the defense request are outstanding.

Accordingly, the parties request that the current motions hearing be continued to Friday, July 5, 2019, or as soon thereafter as is convenient for this Court.² This date would allow the defense to file supplemental briefing by Friday, June 14, 2019, and the government to respond by June 28, 2019. The parties propose a motions hearing on Friday, July 5, 2019, as well as a status conference to follow if the defense Motion is denied. The parties agree that the additional time is excludable under 18 U.S.C. § 3161(h)(1)(D).

A proposed order is attached for the convenience of the Court.

¹ *Silva* is now briefed, argued and pending a decision before the Fourth Circuit. *See United States v. Silva*, No. 18-4652 (4th Cir.). The defense would object to a stay of these proceedings pending the outcome of *Silva* if Ms. Terrazas Siles were to remain detained for that indefinite period.

² Defense counsel is unavailable on Friday, July 12, 2019. Government counsel states that he has a conflict on July 18, 2019.

Respectfully submitted,
LOURDES TERRAZAS SILES

By counsel,

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2019, I filed the foregoing with the Clerk of the Court by hand due to an unexpected error in the CM/ECF system for this case, and also served a true and correct copy on counsel of record.³

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³ The parties were informed on June 4, 2019, by the Clerk's Office of an error in electronic docketing in this case. The Clerk's Office has informed the parties that it is working to resolve the issue, but requested that, in the interim, all pleadings be filed in person.